

## **HOMEOWNERS ASSOCIATION MANAGEMENT AGREEMENT**

**THIS AGREEMENT** is by and between The Courtyards Homeowners Association, a Pennsylvania non-profit corporation (the "Association") and Clagett Management (the "Manager").

**WHEREAS**, the Association was created to administer The Courtyards At The Links At Gettysburg, A Planned Community, a planned community located in Mount Joy Township, Adams County, Pennsylvania (the "Property") pursuant to a certain Declaration of Covenants and Restrictions for The Courtyards At The Links At Gettysburg, A Planned Community intended to be recorded in the Office of the Adams County Recorder of Deeds (the "Declaration"); and

**WHEREAS**, the Association now desires to engage the Manager to manage the property and operations.

**NOW THEREFORE**, in consideration of these premises, the parties agree as follows:

### **ARTICLE 1. EFFECTIVE DATE**

**1.1 Effective Date.** This management agreement shall be effective on the date of the first sale of a unit within the Property to Wormald or to any other third party purchaser.

### **ARTICLE 2. APPOINTMENT OF EXCLUSIVE MANAGING AGENT**

**2.1 Appointment.** For the term of this agreement the Association hereby appoints the Manager as its exclusive agent for the management of the Property. In furtherance of such appointment, the Manager shall have, and the Association hereby delegates to the Manager, the right to manage the Property at the direction of its Executive Board. The services to be provided by the Manager hereunder shall include, but not be limited to, operating and managing the Property as outlined in the attached document entitled "Management Services", and providing such other services as may be reasonably and customarily provided by management agents to owners of real property similar to the Property.

**2.2 Exclusivity.** Except as otherwise expressly provided herein, the Association shall not engage any other entity to perform the services set forth herein with respect to the Property. The Association hereby acknowledges, however, that the Manager is in the business of managing properties similar to the Property, and agrees that this appointment shall not inhibit the Manager from accepting similar appointments from other associations or owners of other properties.

### **ARTICLE 3. THE MANAGER'S POWERS AND RESPONSIBILITIES**

#### **3.1 Management.**

(a) The Manager shall manage, operate and maintain the Property in an effective manner, to the best of its abilities and in accordance with industry standards.

cooperate fully with the Association's contractors or designees during such examinations and/or audits. The Association agrees that any and all such examinations will be at its sole expense.

**5.5 Accounts Payable.** The Manager shall prepare checks and process accounts payable as directed by the Executive Board. All supporting information will be included with checks.

## **ARTICLE 6. BANK ACCOUNTS**

**6.1 Operating Account.** The Manager shall deposit all collected funds from the operations of the Property, including any and all funds advanced by the Association, in the Association's name, in an account (the "Operating Account") to be maintained by the Manager at a banking institution approved by the Association. From the Operating Account, the Manager shall pay the operating expenses of the Property and shall make any other payments authorized by the Association within the approved budget and/or under this Agreement. The Manager shall not be obligated to make any advance to or for the Property or for the account of the Association or to pay any amount except out of the Operating Account. Capital funds may not be combined with operating funds.

**6.2 Funds In Excess of Budget.** Funds in excess of the budget, if any, shall be invested by the Manager, as directed by the Association, at a financial institution approved by the Association.

**6.3 Signatories.** Up to four (4) persons shall to be permitted to have authorization to sign checks. Two (2) authorized persons shall be from the Manager and two (2) authorized persons shall be from the Association. Checks may be signed by an authorized signatory of the Manager or one signatory from the Association, unless the Association's bylaws provide otherwise.

## **ARTICLE 7. PAYMENT OF EXPENSES**

**7.1 Manager's Reimbursable Costs.** The Association shall pay the Manager's reimbursable expenses directly from the Operating Account, subject to the approved Annual Budget, within seven (7) days of receipt of invoice.

**7.2 Manager's Overhead.** The Association shall not be responsible for the payment of the Manager's general overhead or ordinary administrative expenses.

## **ARTICLE 8. INSUFFICIENT GROSS INCOME**

**8.1 Priorities.** The Manager understands and agrees that associations are required to achieve a balanced budget and will incur no expenditure in excess of the approved budget. If at any time gross income shall not be sufficient to pay current or anticipated obligations, The Manager shall submit to the Executive Board actual current and expected future income and expense statements for determination of action to be taken.

**8.2 Capital Reserves.** Capital reserves may not be used by the Manager for ordinary operating expenses without the Association's written approval.

**8.3 Remedies.** Should the Manager incur any expense in excess of budget not previously approved by the Executive Board and/or not required under Article 3.2 of this Agreement, the Association shall have the right, at its sole discretion, to terminate this Agreement.

## **ARTICLE 9. COOPERATION**

**9.1 Cooperation.** Should any claims, demands, suits, or other legal proceedings be alleged, threatened, asserted, made or instituted by any person or entity against the Association which may arise out of any of the matters pertaining to this Agreement, The Manager shall give the Association all reasonable information and assistance in the defense or other disposition thereof.

## **ARTICLE 10. COMPENSATION**

**10.1 Manager's Compensation for Management Services.** As compensation for its services, in managing the Property, the Manager shall receive compensation as specified in Attachment #2 (Management Fees) hereto.

**10.2 Payment of Management Fee(s).** All Management Fees due the Manager under the terms of this Agreement shall be paid by the Association to the Manager on a monthly basis. All fees due can be combined with the Manager's reimbursable costs as outlined in Article 7.

## **ARTICLE 11. TERM OF AGREEMENT & TERMINATION**

**11.1 Term.** This Agreement shall commence on the effective date (Article 1) and shall continue for one (1) year.

**11.2 Termination.** Either party may terminate this Agreement at any time for cause. For purposes of this Agreement, cause shall be defined as the breach or substandard performance by either party of any of their duties as enumerated in this Agreement. A condition of Insufficient Gross Income under Article 8 hereof is hereby deemed to be sufficient cause for termination by the Manager. On the occurrence of an event or the existence of a condition giving rise to the right to terminate under this paragraph, the terminating party shall promptly give written notice to the other party of such event or condition. The breaching party shall then have thirty (30) calendar days from the date of the notice to cure the event or condition. If at the end of the thirty (30) days such cure has not been affected, the terminating party shall serve thirty days written notice of termination on the other party which shall terminate this Agreement on the effective date of such notice. Notwithstanding the foregoing, this Agreement may be terminated at any time without penalty upon not less than 90 days notice by an Executive Board of the Association elected by the unit owners in accordance with the Declaration.

### **11.3 Manager's Rights and Obligations Upon Termination.**

(a) Within thirty (30) business days of the effective date of termination, the Manager shall turn over to the Association: (1) all books and records relating to the Property

(copies of which may be made and retained by the Manager at the Manager's expense), (2) all funds of Association then remaining in the Operating Account or otherwise in the Manager's possession, less any deductions or reserves properly made by the Manager under this Section, (3) such authorizations and letters of direction addressed to tenants, occupants, suppliers, employees, banks and other parties as the Association may reasonably require.

(b) The Manager may, prior to transferring the Operating Account to the Association on termination, deduct from said account any amounts then known to be due and owing from the Association to the Manager, including but not limited to Management Fees, and shall simultaneously provide the Association with an accounting of any monies deducted from the account together with appropriate documentation.

(c) The Manager shall cooperate with the Association in the transfer of management responsibilities to the Association or its designee.

(d) The Manager shall prepare a final statement of all fees, expenses and all other funds due the Association and/or the Manager hereunder within thirty (30) days after the effective date of termination; The Manager shall immediately remit to the Association any amounts due, and the Association shall immediately pay over to the Manager any outstanding Management Fees or other amounts due.

(e) The Association may at its sole expense cause an audit of the Association records to be conducted. Such audit shall be initiated within sixty (60) days of termination and concluded as soon as reasonably practicable.

## **ARTICLE 12. LIMITATION OF LIABILITY**

**12.1 Limitation of Liability of The Manager.** In the exercise of its powers and authority hereunder, the Manager, its officers, shareholders, and employees will not be liable for any mistake in judgment or for any other act or things done, suffered or omitted in good faith, except that the Manager shall be liable for bad faith, misfeasance or negligence in the performance of its duties and obligations hereunder and for disregard of such duties and obligations.

**12.2 Limitation of Liability of the Association.** The Association's officers, members, employees, and agents shall not be personally liable under this Agreement, and the Manager shall look solely to the Association for payment of any claims it may have hereunder.

## **ARTICLE 13. NOTICES.**

**13.1 Notices.** All notices required to be given by either party to the other hereunder shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested and postage prepaid, to the addresses as set forth below:

If to the Manager:

Clagett Management  
20 West Third Street  
Frederick, Maryland 21701

If to the Association:

The Courtyards Homeowners Association  
c/o The Links At Gettysburg, L.L.C.  
601 Mason Dixon Road  
Gettysburg, PA 17325

Either party may at any time change its address by sending written notice to the other party in the manner hereinabove prescribed. Notices shall be deemed effective on the third business day following the day on which the notice was placed in a United States postal depository in accordance with the provisions of this paragraph.

#### **ARTICLE 14. MISCELLANEOUS**

**14.1 Entire Agreement.** This Agreement and attachments entitled "Management Services" and "Management Fees" contain the entire Agreement between the parties hereto, and any agreement hereafter made shall be ineffective to modify or to terminate this Agreement or to constitute a waiver of any of the provisions hereof unless such Agreement is in writing and signed by the party against whom enforcement of the modification, termination or waiver is sought.

**14.2 Headings.** The captions to the paragraphs in this Agreement are included for convenience only and are not intended to and shall not be deemed to modify or explain any of the terms of the Agreement.

**14.3 Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

**14.4 Severability.** This Agreement is intended to be performed in accordance with and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provisions of this Agreement, or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permissible by law.

**14.5 Other.** The Manager agrees to manage the Property in accordance with the requirements of the Declaration, the Association's Articles of Incorporation and Bylaws. Those documents are currently in the Manager's possession.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Witness/Attest:

\_\_\_\_\_

The Courtyards Homeowners Association:

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Witness/Attest:

\_\_\_\_\_

Clagett Management:

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachment #1**  
**Extract from Bylaws of Association**  
**Supplement to Section 3.1 of Management Agreement**

3.2. Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Planned Community which shall include, but not be limited to, the following:

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(c) Collect assessments for Common Expenses from Unit Owners;

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(e) Hire and discharge employees and agents other than managing agents and independent contractors;

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(g) Make contracts and incur liabilities;

(h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements; ...

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3.4. Delegation of Powers; Managing Agent. The Executive Board may employ for the Planned Community a "Managing Agent" at a compensation established by the Executive Board to perform such duties and services as the Executive Board shall authorize. Where a Managing Agent does not have the power to act under the Act, the Declaration or these Bylaws, such duties shall be performed as advisory to the Executive Board. The Executive Board may delegate to the Managing Agent only the powers granted to the Executive Board by these Bylaws under subsections 3.2(c), (e), (g) and (h).

**Attachment #2  
Management Fees**

**FEES FOR MANAGEMENT:** \$10.00 per unit per month for one year with option to renew.

**USAGE COSTS:**

As the frequency of occurrence of the following items is variable, it is more equitable to both parties to establish per occurrence cost to be billed as costs are incurred.

These prices will be honored for the initial term of this agreement.

A. *	Meetings	
	1. Attendance at Board of Directors Meetings Committee Meetings, Special Meetings & Annual Meetings (price includes the Manager to attend up to 5 meetings.)	INCLUDED
	2. Attendance beyond the scope of the agreement	\$30.00 PER HOUR
B.	Minutes transcribed	INCLUDED
C.**	Copies	\$0.07 single \$0.10 duplex
D.**	Mailings: staple, stuff, label, envelope	\$0.10 + stamp price
E.	Collections	
	1. Prepare and send certified letter	\$15.00 + cost of certified postage
	2. File legal collection documents	\$25.00 + filing fee
F.	Newsletter preparation	INCLUDED
G.	Late Billing Notices	\$0.25 + stamp price

**Notes:**

\* The limit on number of meetings attended and length of meetings set forth is intended to protect the Manager from unreasonable demands on his/her time. The Manager, at his/her sole discretion, will waive these provisions when such time is required to ensure efficient operation of the Association.

\*\* The copying and postage charges above are intended to reimburse Clagett Management for the cost of processing bulk projects. Correspondence to the Executive Board, individual unit owners, contractors and/or other occasional letters are a cost of doing business and will be absorbed by Clagett Management.



**Attachment #3  
Management Services**

**Financial Management**

**Financial Management**

- Collect assessments
- Maintain and reconcile accounts monthly
- Authorize and distribute checks
- Provide requested reports
- Prepare and track budget performance
- Provide year-end report of financial status
- Prepare and update reserve analysis annually

**Collect Assessments**

- Prepare and distribute invoices and/or coupons as required
- Post receipts
- Send late notices
- Perform other collection procedures as prescribed by the Executive Board
- Act as liaison with attorney as necessary to protect Association interest
- Provide monthly accounting and receipts
- Provide monthly listing of delinquent accounts and actions in progress to collect them

**Maintain and Reconcile Accounts Monthly**

- Maintain records of debits and credits to checking accounts
- Maintain records of deposits, withdrawals, and interest credited to investment and/or savings accounts
- Reconcile records with monthly statements
- Advise Executive Board regarding distribution of funds for maximum protection

**Authorize and Distribute Checks**

- Confirm invoice amounts and delivery of product or service from vendor
- Confirm availability of funds
- Prepare check for authorization and release by Executive Board
- Note any discrepancy or special circumstance concerning a check

**Provide Requested Reports**

- Provide monthly status report to Executive Board prior to regular meeting
- Adjust report format to the needs of the individual association
- Prepare financial reports to include: Income / Expense, Budget Comparison (year to date), Check Register, Delinquency Report including status of accounts, Account Aging, others as required

## **Prepare and Track Budget Performance**

- Prepare annual budget for Executive Board approval
- Track actual expenditures
- Compare actual to projected expenditures
- Suggest budget modification as needed

## **Administration**

### **Records Maintenance**

- Maintain association permanent files
- Maintain current owner listing
- Maintain operational records
- Maintain inventory of association equipment
- Store all drawings, blueprints, and construction-related information
- Maintain legal documents, rules, enforcement and collections procedures and proceedings
- Store items of historical interest

### **Executive Board Operations**

- Write minutes and other meeting information
- Present monthly management reports to board
  - Financial
  - Inspection reports
  - Action items
  - Project updates
  - Correspondence
  - Information items
- Create operations calendars
- Update and revise operational procedures regularly
- Attend meetings of the Executive Board
- Maintain reference material library for use by Executive Board
- Publish and distribute information as necessary
- Coordinate annual meeting and prepare necessary documents

### **Owner / Resident Services**

- Provide twenty four hour coverage for emergencies
- Assist individual homeowner members with problems
- Provide resale information as needed
- Have available copies of Declaration, Bylaws, Articles of Incorporation and Association Rules and Regulations.

## **Training**

- Provide long-range planning sessions
- Provide special topic sessions as needed

## **Staff Supervision**

- Provide all supervision and management of staff
- Provide all necessary administration for staff

## **Contract Management**

### **Prepare Specifications**

- Review existing specifications
- Modify and/or update as necessary
- Prepare new specifications as needed
- Submit to Executive Board for approval

### **Identify Qualified Contractors**

- Obtain referrals and references
- Determine ability and willingness of contractor to complete contract
- Interview prospective contractors

### **Prepare and Distribute Request for Proposals**

- Assemble Request for Proposal (RFP) package to include:
  - Specifications
  - Due date
  - Contact person for additional information
  - Date of information meeting if applicable
  - Statement of rights reserved to Association
- Distribute package to qualified contractors
- Confirm contractors intent to submit proposal

### **Coordinate Contractor Presentations**

- Schedule meetings with the contractors as requested
- Coordinate times with contractors
- Prepare information package for Executive Board
- Facilitate meetings

### **Notify All Bidders of Decision**

- Prepare and distribute Executive Board decision letter to contractors

## **Oversee Execution of Contracts**

- Coordinate work schedule with contractor
- Inspect work progress regularly for contract compliance
- Negotiate any necessary changes for Executive Board approval
- Make progress reports to Executive Board
- When work is completed, notify appropriate parties for final inspections

## **Maintenance**

### **Prepare and Implement Preventive Maintenance Schedule**

- Identify and list maintenance responsibilities of Association
- Prepare schedule of maintenance requirements
- Estimate cost of maintenance for budgeting purposes
- Include sufficient funds in budget for required maintenance
- Ensure scheduling and completion of all approved maintenance

### **Status Reports**

- Report to Executive Board the results of any inspections

### **Oversee Maintenance Contractors**

- All regular contractor work (e.g., lawn mowing) will be checked
- Special project contracts will be checked during work and at completion of contract
- Attention will be directed to adherence to contract specifications, quality of materials and workmanship.

**Note:** The preceding itemization of services is not to be construed as absolute. It is presented as an overview of services Clagett Management is capable of providing. The Executive Board may utilize these services as it desires.